

**International Longshoreman's Association, Local 1575, AFL-CIO (Puerto Rico Marine Management, Inc.) and Jorge L. Martinez and Jose H. Gomez.** Cases 24-CB-1698 and 24-CB-1714

December 16, 1996

# DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND HIGGINS

The issue presented in this case is whether the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by threatening to cause the discharge of employees for not executing new dues-checkoff authorizations and by causing the discharge of employees Martinez and Gomez for failing to execute dues-checkoff authorizations.<sup>1</sup>

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order as modified.<sup>3</sup>

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, International Longshoreman's Association, Local 1575, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified. Substitute the following for paragraph 2(g).

"(g) Within 14 days after service by the Region, post at its business office and on any union bulletin boards at the facilities of the Employers, Spanish and English copies of the attached notice marked 'Appendix.'<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to union members are customarily posted. Reasonable steps shall be taken by the

<sup>1</sup> On August 16, 1996, Administrative Law Judge Peter E. Donnelly issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>3</sup> We shall modify the judge's recommended Order to delete a contingent provision for the mailing of notices that is applicable only to employer respondents.

Respondent to ensure that the notices are not altered, defaced, or covered by any other material."

*Magdalena S. Revuelta, Esq. and Izquierdo Rodriguez, Esq.,* for the General Counsel.  
*Nicolas Delgado, Esq.,* of Puerto Nuevo, San Juan, Puerto Rico, for Respondent.

## DECISION

### STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. Upon charges filed by Jorge L. Martinez, Wilberto Sauri, Jose H. Gomez, Lionel Sanabria, and Felix Miranda, all individuals, a complaint and notice of hearing issued and subsequently an order consolidating cases and consolidated amended complaint issued on January 26, 1996, alleging that International Longshoreman's Association, Local 1575, AFL-CIO (the Union or Respondent) violated Section 8(b)(1)(A) and (2) of the Act by unlawfully implementing the union-security and checkoff provisions of the existing contract causing Employers Puerto Rico Marine Management, Inc. (PRMMI), Sea Land Service, Inc. (Sea Land), and San Juan Mercantile Corporation (SJ Mercantile) to discharge the above-named individuals for failing to execute dues-checkoff authorizations increasing their union dues to 2 percent under a union-imposed deadline while these individuals were being denied the opportunity to execute the dues-checkoffs authorizations.

The charges involving Sauri, Sanabria, and Miranda were settled and severed from the remaining charges involving Martinez and Gomez by order of Regional Director dated March 15, 1996. The case was heard before me on March 18 and 19, 1996. Briefs have been timely filed by the General Counsel and Respondent, which have been duly considered.<sup>1</sup>

### FINDINGS OF FACT

#### I. EMPLOYERS' BUSINESS

Employer PRMMI is a Delaware corporation with its principal office and place of business at Puerto Nuevo, San Juan, Puerto Rico, where it is engaged in providing marine transportation and related services between Puerto Rico and the United States. During the past 12 months, PRMMI, in the conduct of its operations, derived gross revenues in excess of \$500,000 and purchased and received at its San Juan, Puerto Rico facility goods valued in excess of \$50,000 directly from points outside of Puerto Rico.

Employer Sea Land is a Puerto Rico corporation with its principal office and place of business in San Juan, Puerto Rico, where it is engaged in providing marine transportation and related services between Puerto Rico and the United States. During the past 12 months, Sea Land, in the conduct of its operations, derived gross revenues in excess of \$500,000 and purchased and received at its San Juan, Puerto Rico facility goods valued in excess of \$50,000 directly from points outside of Puerto Rico.

<sup>1</sup> By motion dated April 9, 1996, the General Counsel submitted translations of various exhibits not translated at the time the hearing closed. No opposition having been filed, the motion is granted.

The complaint alleges, the answer admits, and I find that the Employers are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. Facts

In 1989, the Union determined that a dues increase was necessary. A meeting of the membership was held where a vote was taken and a dues increase was passed. However, this increase was not implemented because a group within the membership who opposed the raise filed suit in Federal District Court for the District of Puerto Rico to rescind the increase.

As a result of this litigation, another meeting of the membership was held on November 28, 1993, in which meeting the membership voted to increase union dues to 2 percent of gross wages.<sup>2</sup> After this meeting, the Employers who employed union members (Sea Land and PRMMI) were advised by letter dated November 30 that effective January 1, 1994, they must begin to check off dues at the 2 percent of gross earnings figure until new checkoff authorizations had been obtained from the members.<sup>3</sup>

According to Jose Pablo Garcia, area delegate, Juan Velez Rodriguez, union vice president, and Carmen Garcia Montez, union secretary, union delegates were provided a notebook to record the execution of new checkoff authorizations by union members for approaching various work areas of their Employers. Garcia testified that the necessity for union members to sign new checkoff authorizations was common knowledge on the docks and many of the members came to him to sign new authorizations. In addition, he went to those who had not signed and asked them to sign. Garcia testified that there was a group who refused to sign authorizations, apparently those who had previously supported the earlier litigation opposing any dues increase. Among those, according to Garcia, were Martinez and Gomez, who simply walked away when Garcia broached the matter with them. Garcia testified that he had not explained to them their responsibility and the consequences of not signing because they were all aware of them.

Velez testified that after the membership voted approval of the 2-percent dues, delegates were sent out with notebooks to obtain new checkoff authorizations from the members. Velez testified that he spoke to both Martinez and Gomez in their work areas and that he explained to them what their obligations were under the contract and that they could lose their jobs if they did not sign. Gomez made a joke and said "Good-bye," and Martinez simply walked away. Neither signed the new checkoff authorization.

<sup>2</sup> Previously, dues were set at \$1-per-shift employed.

<sup>3</sup> Apparently, these dues were not being remitted to the Union until the new checkoffs had been executed, although the record is not clear on this point.

The union newsletter for December 1993 on page 3 contains an article about the union meeting on November 23, 1993, and the vote in favor of a 2-percent dues contribution.

It appears that at some time in about late January the union leadership decided to establish a deadline for members to sign the new checkoff authorizations. Thereafter, the Union would request the discharge of those who had not signed pursuant to the union-security provisions of the collective-bargaining agreement.<sup>4</sup>

The deadline set was February 11, 1994,<sup>5</sup> and leaflets were prepared advising members of their responsibility to sign new checkoff authorizations and the consequences of not doing so.

These pamphlets were given to area delegates for distribution and were posted in the work areas of the Employers at the docks.

On the last day of the February 11 deadline, a group of those who had not yet signed authorizations came to the union office. Garcia testified that he recalled speaking to Martinez and asking him if he wanted to sign the authorization and that Martinez responded without explanation that he did not. He recalled that some of the others also did not sign.

By letter dated April 13, 1994, Ortiz, who at the time was president of the Union, wrote to Luis A. Colon, industrial relations manager of PRMMI, to inform him, *inter alia*, that "within the next 24 hours you must suspend from employment and salary the persons who have not signed dues check-off authorization since these persons are violating what is provided for in law with regard to the payment of the earnings of the Union members to the same." In response, Colon wrote to Ortiz by letter dated April 14, 1994, as follows:

I hereby acknowledge receipt of your letter of April 13 of this year in which you point out to us that, within the next twenty-four (24) hours, we must suspend from employment and salary the persons who have not signed the Union's dues check-off authorization.

Pursuant to your request, please find list of persons who, according to the best of our knowledge and belief, have not signed the dues check-off authorization.

<sup>4</sup> The collective-bargaining agreement's union-security provisions read:

### ARTICLE I UNION SHOP

A. During the period of continuation and throughout the rest of the life of this Collective Bargaining Agreement, all of the workers covered by the bargaining unit fixed in this Collective Bargaining Agreement shall be obliged to comply with the following union shop clause:

B. Affiliation with the Union shall be a condition of employment after the thirtieth day subsequent to said employment, or after the thirtieth day of the date of the signing of this collective agreement, provided that the Employer has no reasonable basis for believing (1) that said affiliation was not available for the employee under the same terms and conditions generally applicable to other members and (2) that the affiliation to the Union was not refused or terminated for other reasons than the failure of the employee to offer the payment of the periodical Union dues, and the uniform initiation fees required as a condition to acquire or retain affiliation with the Union.

<sup>5</sup> All dates refer to 1994 unless otherwise indicated.

Please review said list and inform us if any of these have signed the authorizations and/or if there are any persons who are not included in our list who have not signed.

As soon as we receive this information, we will proceed as per your wishes.

Martinez was among the 18 employees listed as not having signed a new checkoff authorization.

By substantially identical letters dated May 2 from Sea Land, Martinez and Gomez were advised:

The present letter is to inform you that we have been notified by the ILA, Local 1575 union that you are one of the members of said brotherhood who appears in its records as not having signed the authorization for the new check-off dues (2%) effective on January 1, 1994, for which reason they have requested your dismissal.

We will appreciate that in a period of ten (10) working days from the receipt of this letter you confirm us in writing whether or not the information provided by the union is correct.

Another letter from PRMMI was sent to Martinez on May 11, essentially a duplicate of the May 2 letter from Sea Land. By letter dated June 8, Ortiz advised PRMMI:

Enclosed I am sending you a list of the persons who at this time have not signed the dues check-off authorization who must be suspended from their employment in accordance to what the law provides in the cases of the union members who do not comply with the payment of the [ir] earnings.

If in the future any claim arises supported by the relevant evidence, their reinstatement would be justified.

I am also sending you a copy of the affidavits and evidence submitted by some members that justify the reason why they did not sign the check-off authorization during the period schedule to carry out side endeavor.

By letters dated June 10, Sea Land terminated Martinez and PRMMI terminated both Gomez and Martinez pursuant to the Union's request, effective June 15.

It is undisputed that after the deadline date of February 11 had passed, many members who had not signed by the deadline were allowed to sign, provided that the Union was satisfied with their explanation for missing the deadline. Some were allowed to avoid discharge because they were ill and not working during the time period preceding February 11 or were otherwise unaware of the deadline for signing the new checkoff authorizations and offered explanations acceptable to the Union.

Martinez testified that he had been a union member since 1978. He was discharged by both Sea Land and PRMMI on June 10, 1994, pursuant to the Union's request.

Martinez testified that he was one of a group within the Union opposing and supporting the litigation of any dues increase. He was aware that the membership had approved the 2-percent dues increase in November 1993, which was implemented when Sea Land and PRMMI began deducting, by way of checkoff, additional dues from his pay beginning in

January 1994. Sea Land payroll records show that dues were checked off from Martinez' earnings despite the fact that Martinez had not signed any checkoff authorization for the increase.

Martinez testified that he was not asked to sign any dues-checkoff authorization and was not aware that any deadline had been established for signing the new checkoff authorization. Further, he worked only sporadically and while he was aware of the existence of a bulletin board at the workplace where job assignments were posted, he never looked at it because he obtained his work assignments by calling in. Thus, he was unaware whether any "deadline" information had been posted because he had no need to look at the bulletin board.

According to Martinez, he first became aware that he might be discharged when he received the above-noted letters dated May 2 from Sea Land and PRMMI. The day following his receipt of the letters, and on several occasions until his discharge on June 15, he went to the union hall for the purpose of signing a new checkoff authorization for the 2-percent dues but was denied the opportunity to do so. He was told by several union delegates, including Angel Lopez, that those individuals who had not signed the checkoff authorization would not be allowed to sign and that the 2-percent dues taken from their wages would be reimbursed to them.<sup>6</sup>

Gomez was not on any of the employee job classification lists maintained by Sea Land and PRMMI. He worked intermittently by selection from a shapeup at the dock. During January 1994, PRMMI records show that he worked two shifts earning \$456.75 and that \$9.14 was checked off for union dues.

Gomez testified that the Union made no effort to request him to sign a new checkoff authorization and that he was not aware that he had any obligation to sign one and that he was told nothing about it. He testified that he had no recollection of any union meeting to raise dues and was unaware of any increase to 2 percent for dues. Further, that he first became aware of this problem when he received the letter dated May 2, 1994, from Sea Land, set out above. On receipt of this letter, he went to the union hall where he spoke to Union President Guillermo Ortiz, requesting to sign a new dues-checkoff authorization. Ortiz told him that Gomez would have to gather all those who had not signed; that it was necessary for all of them to sign. Gomez was not permitted to sign a checkoff authorization and was not asked for evidence to justify his failure to sign.<sup>7</sup>

#### B. Discussion and Analysis

In circumstances where a collective-bargaining agreement contains valid union-security provisions, employees may be required to become union members as a condition of employment and a union may request their discharge for having failed to pay union dues. *Western Publishing Co*, 263 NLRB 1110 (1982).

However, a union may not compel union members to execute dues-checkoff authorizations as a condition of their em-

<sup>6</sup> According to Martinez, none of these dues contributions have been reimbursed.

<sup>7</sup> Neither Lopez nor Ortiz testified at the hearing. Having reviewed the record, I conclude that the un rebutted testimony of Martinez and Gomez should be credited.

ployment and a union may not threaten to cause their discharges or cause them to be discharged for failing to execute dues-checkoff authorizations. The execution of a dues-checkoff authorization is entirely voluntary. It is only for the non-payment of union dues and initiation fees that a union may compel an employer to discharge an employee under the union-security provisions of the contract. *Gloria's Manor Home for Adults*, 225 NLRB 1133, 1144 (1976).

In the instant case, the record makes it abundantly clear that after the dues were increased to 2 percent of wages, the Union requested all employees to execute new dues-checkoff authorizations and threatened to discharge under the security provisions of the contract any of those employees who either refused or failed to do so by the union-imposed deadline of February 11. Such threats violate Section 8(b)(1)(A) of the Act. *Gloria's Manor Home for Adults*, supra; *Windsor Castle Health Care Facilities*, 310 NLRB 579, 593 (1993).

The record also discloses, and the Respondent in fact concedes, that it was motivated in requesting PRMMI and Sea Land to discharge Martinez and Gomez for the reason that they had failed to execute dues-checkoff authorizations.

Respondent argues that both had the opportunity to execute new dues-checkoff authorizations but willfully refused to do so. In my view of the case, this is not material. The failure to execute a dues checkoff, whether they had the opportunity to do so or not, is not a valid or legitimate justification for requesting Employers Sea Land and PRMMI to discharge them. The only valid reason on the facts of this case to request the discharge of employees under the contract would have been their failure to pay dues and initiation fees.

Turning to that issue, this record discloses no failure on the part of either Martinez or Gomez to pay dues. In fact, it appears that like others employed by PRMMI and Sea Land under the existing contract, the new 2-percent dues were being deducted from their wages at the request of the Union after January 1, 1994, even in the absence of dues checkoff authorization.

But even assuming that Martinez and Gomez owed dues, the Board has set out specific and detailed criteria which must be met before a union can request the discharge of an employee under the union-security provisions of a contract. These criteria, set out in Board precedent, hold that when a union seeks to enforce the union-security provisions of a contract against unit employees, it has a fiduciary duty to fully inform the employee of his dues obligation before taking any action to effect his discharge. Specifically, the Union has to give the employee, at minimum, reasonable notice of the delinquency, including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount, tell the employee when to make the required payment and explain to the employee that failure to pay will result in discharge. *Western Publishing Co.*, supra.

None of these criteria were met in the instant case.

Based on the entire record here, I conclude that Respondent violated Section 8(b)(1)(A) of the Act by threatening to cause the discharge of employees for not executing new checkoff authorizations and by causing Sea Land and PRMMI to discharge Martinez and Gomez for failing to execute dues-checkoff authorizations in violation of Section 8(b)(2) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with the Employers' operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has violated the Act, I shall recommend that it cease and desist therefrom and from engaging in any like or related conduct, signing additional notices for posting by the Employers should the Employers so desire.

Respondent shall further be ordered to advise the Employers, Martinez, and Gomez, in writing, that it withdraws and rescinds its request for their discharges and that it has no objection to their reinstatements without loss of seniority or other rights and privileges previously enjoyed by them.

Respondent shall further be ordered to request, in writing, the Employers to reinstate both Martinez and Gomez.

In addition, Respondent shall be ordered to make Martinez and Gomez whole for any loss of pay they may have suffered as a result of the discrimination practiced against them. This includes reimbursement for any dues withheld from their wages since January 1, 1994. All backpay and reimbursement provided here, with interest, shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *F. W. Woolworth Co.*, 90 NLRB 289 (1950).<sup>8</sup>

#### CONCLUSIONS OF LAW

1. The Employers are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(b)(1)(A) of the Act by threatening to cause the discharge of employees, including Jorge L. Martinez and Jose H. Gomez, under the union-security provisions of the existing contract for failing to execute dues-checkoff authorizations.

4. The Respondent violated Section 8(b)(2) of the Act by causing the discharge of employees Jorge L. Martinez and Jose H. Gomez for failing to execute dues-checkoff authorizations.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>9</sup>

<sup>8</sup> It is immaterial to the relief afforded here whether Gomez was a union member because it is clear that his employment was governed by the union-security provisions of the existing contract and the Union discriminated against him.

<sup>9</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, International Longshoreman's Association, Local 1575, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening to discharge employees under the union-security provisions of the existing contract for failing to execute dues-checkoff authorizations.

(b) Causing or attempting to cause Puerto Rico Marine Management, Inc. and Sea Land Service, Inc. or any other employer to discharge Jorge L. Martinez and Jose H. Gomez or any other employee under the union-security provisions of the existing contract for failing to execute dues-checkoff authorizations.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Advise Puerto Rico Marine Management, Inc., Sea Land Service, Inc., Jorge L. Martinez, and Jose H. Gomez, in writing, that Respondent withdraws and rescinds its request for their discharges and that it has no objection to their reinstatement without loss of seniority or other rights and privileges previously enjoyed by them.

(b) Affirmatively request Puerto Rico Marine Management, Inc. and Sea Land Service, Inc., in writing, to reinstate Jorge L. Martinez and Jose H. Gomez.

(c) Make Jorge L. Martinez and Jose H. Gomez whole, with interest, for any loss of earnings they may have suffered as a result of our discrimination against them in the manner set forth above in the remedy section.

(d) Within 14 days from the date of this Order, remove from its files and ask the Employers to remove from the Employers' files, any reference to the unlawful discharges and, within 3 days thereafter, notify the employees in writing that it has done so and that it will not use the discharges against them in any way.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by Puerto Rico Marine Management, Inc. and Sea Land Service, Inc., if willing, at all places where notices to employees are customarily posted.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its business office and on any union bulletin boards at the facilities of the Employers, Spanish and English copies of the attached notice marked "Appendix."<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous

<sup>10</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

places, including all places where notices to union members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by either Puerto Rico Marine Management, Inc. or Sea Land Service, Inc., at any time since August 2, 1994.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to discharge employees under the union-security provisions of the existing contract for failing to execute dues-checkoff authorizations.

WE WILL NOT cause or attempt to cause Puerto Rico Marine Management, Inc., Sea Land Service, Inc. or any other employer to discharge Jorge L. Martinez, Jose H. Gomez, or any other employee under the union-security provisions of the existing contract for failing to execute dues-checkoff authorizations.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed by Section 7 of the Act

WE WILL advise Puerto Rico Marine Management, Inc. and Sea Land Service, Inc., Jorge L. Martinez, and Jose H. Gomez, in writing, that we withdraw and rescind our request for their discharges and that we have no objection to their reinstatements without loss of seniority or other rights and privileges previously enjoyed by them.

WE WILL affirmatively request Puerto Rico Marine Management, Inc. and Sea Land Service, Inc., in writing, to reinstate Jorge L. Martinez and Jose H. Gomez.

WE WILL make the above-named employees whole, with interest, for any loss of pay suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, remove from our files and ask the Employers to remove from the Employer's files, any reference to the unlawful discharges of Jorge L. Martinez and Jose H. Gomez, and WE WILL, within 3 days thereafter, notify them in writing that we have done so and that we will not use their discharges against them in any way.

INTERNATIONAL LONGSHOREMAN'S ASSOCIATION, LOCAL 1575, AFL-CIO